CONCEALED FIREARMS & WEAPONS LEGAL TRAINING BULLETIN

DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES

OBJECTIVE

The Florida Highway Patrol's mission is to protect and serve while still balancing the need for officer safety, the public's safety and the right to carry weapons. This training is meant to assist troopers in understanding the complexities of determining the lawfulness of a citizen having a concealed weapon.

It has been a bloody new year for U.S. law enforcement. In the past several months, police and other law enforcement officers have been shot in the line of duty in St. Petersburg, Miami, Detroit, Indianapolis, Lincoln City, Oregon, and rural Kitsap County, Washington. The Florida Highway Patrol is taking the recent shooting trend seriously.

This training will review basic definitions, statutes, Concealed Weapons Permits, HR 218, The Law Enforcement Officers Safety Act of 2004, S. 1132 Law Enforcement Safety Improvement Act of 2010, and best practices during traffic stops to protect and serve.

DEFINITIONS

Concealed firearm means any firearm, as defined in subsection (6), which is carried on or about a person in such a manner as to conceal the firearm from the ordinary sight of another person. Section 790.001(2), Florida Statutes (2010).

Concealed weapon means any dirk, metallic knuckles, slungshot, billie, tear gas gun, chemical weapon or device, or other deadly weapon carried on or about a person in such a manner as to conceal the weapon from the ordinary sight of another person Section 790.001(3), Florida Statutes (2010).

Firearm means any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term "firearm" does not include an

antique firearm unless the antique firearm is used in the commission of a crime. Section 790.001(6), Florida Statutes (2010).

Readily access for immediate use means that a firearm or other weapon is carried on the person or within such close proximity and in such a manner that it can be retrieved and used as easily and quickly as if carried on the person. Section 790.001(16), Florida Statutes (2010).

Securely encased means in a glove compartment, whether or not locked; snapped in a holster; in a gun case, whether or not locked; in a zippered gun case; or in a closed box or container which requires a lid or cover to be opened for access - Section 790.001(17), Florida Statutes (2010).

Law enforcement officer means:

- (a) All officers or employees of the United States or the State of Florida, or any agency, commission, department, board, division, municipality, or subdivision thereof, who have authority to make arrests;
- (b) Officers or employees of the United States or the State of Florida, or any agency, commission, department, board, division, municipality, or subdivision thereof, duly authorized to carry a concealed weapon;
- (c) Members of the Armed Forces of the United States, the organized reserves, state militia, or Florida National Guard, when on duty, when preparing themselves for, or going to or from, military duty, or under orders;
- (d) An employee of the state prisons or correctional systems who has been so designated by the Department of Corrections or by a warden of an institution;
- (e) All peace officers;
- (f) All state attorneys and United States attorneys and their respective assistants and investigators.

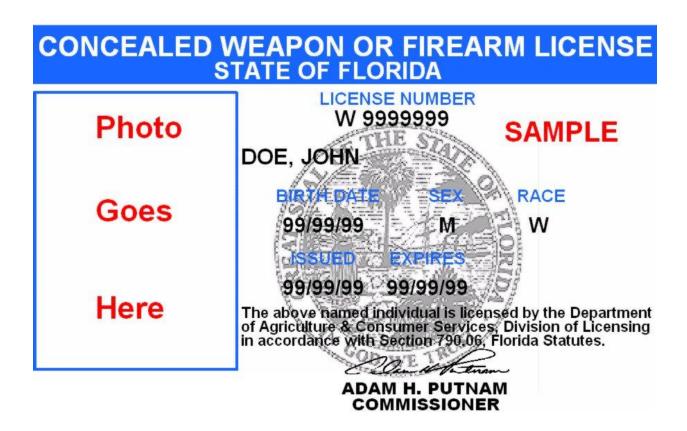
Section 790.001(8), Florida Statutes (2010).

LAWFUL POSSESSION OF A CONCEALED WEAPON

There are several ways for an individual to be in lawful possession of a concealed weapon. The first way is for the weapon <u>not to be</u> readily accessible. A second way for a person to be lawfully in possession of a concealed weapon is for it to be securely encased. A person in possession of a valid Florida Concealed Weapon or Firearm License or a similar concealed weapons permit or license from one of the states we have reciprocity is a third way for a person to be in lawful

possession of a concealed weapon or firearm. The fourth way for an person to be in lawful possession of a Concealed weapon or firearm is for him or her being an active law enforcement officer or retired law enforcement officer in possession of the proper credentials as provided in the Federal law Enforcement Officer Safety Act. Florida Concealed Weapon or Firearm License can be verified via FCIC.

FLORIDA'S CONCEALED WEAPONS LICENSE



Non-residents who hold a valid, concealed firearms permit from another state and who are 21 or older, may also carry concealed weapon or firearm within this state if the issuing state honors the Florida licenses. Check the Department of Agriculture and Consumer Services web site for states of reciprocity. http://licgweb.doacs.state.fl.us/FORMS/ReciprocityList.pdf

HR 218 FEDERAL LAW ENFORCEMENT SAFETY ACT OF 2004 & S. 1132 LAW ENFORCEMENT SAFETY IMPROVEMENT ACT OF 2010.

In 2004, HR 218 ("the Act") was passed by Congress and signed by the President to allow active and retired law enforcement officers to carry concealed firearms within the boundaries of the United States. (Title 18, 44 United States Code, sections 926B and 926C). In October of 2010, the Act was amended by S. 1132 ("Improvement Act"). In short, active employed law enforcement officers are permitted to carry concealed firearms, as long as they are in possession of current, active credentials and are otherwise in compliance with the requirements spelled out in the Act and the Improvement Act. Law enforcement retirees are permitted to carry concealed firearms, as long as they are in possession of their retirement identification, a State Firearms Qualification Proficiency Card, and are otherwise in compliance with the requirements spelled out in the Act and the Improvement Act. The Qualification Proficiency Card is good for a period of one year and is an essential element in establishing the requirements of the acts to allow a retiree to carry the type of weapon that is similar to the one with which he or she was qualified. The Proficiency Card is NOT a state permit card or license authorizing the bearer to carry a concealed weapon. It documents one of several elements necessary to meet the federal laws' requirements.

For example, if the retiree qualified with a revolver, he or she may carry **any** revolver, it does not have to be the one with which the retiree qualified.

The House Resolution 218 and a questions and answers document about the Federal Law Enforcement Safety Act can be viewed at FDLE's Web site http://www.fdle.state.fl.us/content/getdoc/2a72685f-c5f7-4ec1-bf43-73cce98bd4aa/HR-218/HR-218-Information.aspx

¹ The Improvement Act of 2010 revised the definition of "qualified retired law enforcement officer" to: (1) include officers "separated" (original Act, "retired") in good standing from service with a public agency as a law enforcement officer; and (2) reduced the years-of-service requirement for such officers from 15 to 10 years. It revised: (1) requirements for firearms certification for such separated officers to allow firearms training in accordance with the standards of the officer's former agency, the state in which such officer resides, or if such state has not established training standards, standards established by a law enforcement agency within the state or those used by a certified firearms instructor; and (2) mental health requirements for such officers.

Eligibility to carry concealed under the federal law is evaluated at the time the officer or retiree is encountered carrying a concealed firearm. Possession of required documents, as well as meeting the other elements of the law (e.g. not under the influence of alcohol or drugs) are essential to establishing one's legal right to carry concealed *at the time encountered carrying the firearm*. Lawfully carrying a concealed under the federal law does not vest the person with law enforcement powers he or she would not otherwise possess nor does it provide the person with "national police powers."

HR -218 Florida Retiree Firearms Proficiency Verification Card

This Certifies That:	STATE OF FLORIDA Criminal Justice Standards and Training Commission Firearms Proficiency Verification Card	Card Number 07491
firearm(s)]	achieved a passing score usi achieved a passing score usi on the minimum to policable to law enforcement officers by Chapter 943, Florida Statutes.	
representation as to the curre	clorida Criminal Justice Standards and Training Commission and ent status of the named person as an active or retired law enforcement we Enforcement Officer Safety Act of 2004. That determination should be senting this card.	nt officer acting in accordance
Range Instructor's Signature:		
Range Instructor's Printed Name:		
Range Instructor's CJSTC Certification Expires:		
CJSTC-600 Created July 1, 2007 by Section 943.132, F.S.		

UNLAWFULLY CARRYING CONCEALED FIREARMS OR WEAPONS

The key in determining whether a firearm or weapon is concealed is if it was being carried on or about a person in such a manner as to hide the weapon or firearm from the ordinary sight of another person. However, court cases have interpreted this not to mean absolute invisibility. It is possible for a firearm or weapon to be concealed for purposes of prosecuting an individual for carrying a concealed weapon or firearm, but still be in open view or plain sight.

Additionally, when encountering the firearm or weapon in a vehicle in Florida, you must determine if the weapon or firearm is securely encased or readily accessible for immediate use. Even if a weapon or firearm is concealed, it still might not be a chargeable offense since the weapon or firearm was "securely encased" or "not readily accessible for immediate use."

VIOLATIONS

Florida law gives an officer the right to arrest a person without a warrant if the officer has probable cause to believe that a person is violating section 790.01, Florida Statutes (2010), by carrying a concealed weapon or firearm.

Carrying a concealed *weapon* is a 1st Degree Misdemeanor. Section 790.01(1), Florida Statues (2010). Carrying a concealed *firearm* is a 3rd Degree Felony. Section 790.01(2), Florida Statues (2010).

PRACTICE TIPS

Remember the exceptions, people with concealed weapons permits, active law enforcement and corrections officers as authorized by Florida law, members of the Armed Forces of the United States and Florida National Guard – when on duty or traveling to and from duty, U.S. Attorneys - State Attorneys and their respective assistants and investigators, and active or retired officers carrying under the provisions of HR 218 and S. 1132.

Remember, the rule for determining whether or not a weapon is concealed, is if it takes two or more steps to access the weapon is it not concealed. If the weapon is in plain view, or it cannot be readily accessible or it is securely encased, it is not concealed. For example, an unholstered gun in a glove box is considered "securely encased." An unloaded firearm on the front seat with the ammunition in the glove box is not readily accessible for immediate use. A gun found in a zippered bag

located behind the driver's seat is securely encased. A closed switchblade knife found in the center console is not readily accessible and therefore, it is not a violation of the concealed weapon statute. A pistol in a closed box wedged between the driver's seat and passenger's seat is securely encased.

Recommendation – <u>Subjects who are in unlawful possession of a concealed weapon should be placed under arrest</u>. The unlawful carrying of a concealed weapon is considered a breach of the peace. The weapon should be taken into custody as evidence and the subject should be arrested, transported and booked into the county jail.

BEST PRACTICES WHEN DEALING WITH SUBJECTS WHO ARE LAWFULLY OR UNLAWFULLY CARRYING CONCEALED WEAPONS

Subjects Lawfully Carrying Concealed Weapons

Officer Safety is Paramount!

Effective Communication is the key – remain respectful and professional in your communication. Remember, the subject **is not** breaking the law.

You, the officer, have the right to maintain control of the weapons or firearms and people you encounter in the lawful performance of your duty. The discretion on how to handle these incidents is yours. When using your discretion, keep in mind that credentials and their validity can often be difficult to confirm, and fraudulent documents are easy to come by in today's technological world. For example, you may not be familiar with another state's documentation under HR 218 and S. 1132, and if documentation appears "suspect," you may resolve your suspicions before deeming the person in compliance with (or in violation of) the law. If you any questions in determining whether to arrest based only on documents, you may want to contact your local state attorney or your troop legal advisor. You do not have to sacrifice your safety to uphold the rights of a subject to lawfully carry a concealed weapon.

If you choose to take control of the lawfully concealed weapon, attempt to do so with the cooperation of the subject that you are dealing with. Explain to them "it is for your safety and mine" or something similar to that.

At the end of the encounter, return the weapon to the subject in a manner that allows the subject to regain control of the weapon, but does not allow it to be

readily accessible for use. For instance, return the firearm unloaded and hand him or her the bullets. Thank the subject for cooperating with you and ask him or her not to make the weapon readily accessible again, until you, he or she has parted the encounter.

Subjects Unlawfully Carrying Concealed Weapons

Officer Safety is Paramount!

Control the subject and the weapon - revert to training. Control the subject through effective communication and control of their hands. Restrain the subject and gain control of the weapon. Remember to search thoroughly, people who carry concealed weapons unlawfully, often carry more than one.

Place the subject under arrest. Inform them of their rights, properly control and give receipt of the evidence, transport and book them into the county jail.

CONCLUSION

Encounters with armed individuals are not rare. As a result of the action plan developed by FHP Academy and the Office of General Counsel, a new training PowerPoint module, as well as this Legal Training Bulletin, will be distributed to all sworn members starting in March. Through the training module and bulletin, our agency will stress the importance of maintaining officer safety while understanding and protecting the people's constitutional right to bear arms.

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For further information, please contact your troop's legal advisor.